

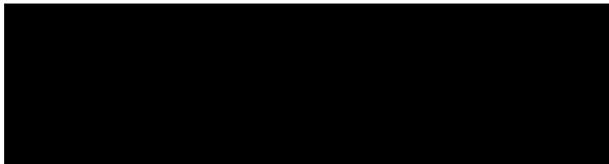


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536



File:



Office: Texas Service Center

Date:

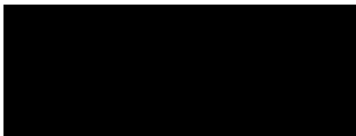
JAN 10 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



**Public Copy**  
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

For Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a ballet company which seeks to employ the beneficiary as its artistic director. The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established that the beneficiary qualifies for classification as an alien of extraordinary ability.

On appeal, counsel states that additional documentation is forthcoming within 10 days. To date, nearly two months after the filing of the appeal, this office has received no further documentation from counsel or the petitioner.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as the artistic director of a ballet company. Promotional materials in the record indicate that the beneficiary is the founder of the petitioning company, and that the petitioner's goal is "providing South Carolina audiences with the opportunity to experience . . . classical ballet, while supporting the community needs through a very active outreach program."

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which pertains to the following criteria.

*Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The record contains copies of local newspaper reviews of performances by the petitioning company, as well as previews of upcoming performances. Such local reviews are routinely encountered in the performing arts, and do not demonstrate an extraordinary level of recognition. Previews often derive from press releases prepared by the dance company itself. Older reviews of the beneficiary's performances as a dancer are of diminished relevance because the beneficiary seeks admission as an artistic director of extraordinary ability. Other evidence in the record indicates that the beneficiary himself no longer performs as a dancer. Unless the petitioner definitively establishes an irrefutable correlation between success as a dancer and success as an artistic director, evidence regarding the beneficiary's own career as a dancer cannot establish acclaim as an artistic director.

Additional newspaper articles derive from unidentified publications, and do not include the required translations.

Media coverage of the beneficiary's more recent work is largely restricted to South Carolina newspapers. Although some of these articles consist of profiles and interviews, rather than mere reviews of performances, there is no indication that these articles were nationally published and therefore they cannot contribute to national acclaim.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The record contains several witness letters, submitted along with the initial petition. [REDACTED] choreographer for the petitioning company, worked with the beneficiary in the Croatian National Ballet. Ms. [REDACTED] asserts that the beneficiary "possesses not only extraordinary talent as an artist but he is driven by a passion for sharing classical ballet with communities at the highest professional level."

[REDACTED] Director of the [REDACTED] states that he has known the beneficiary "since 1982 when we began working together [at the] [REDACTED] (portions of Mr. [REDACTED]'s photocopied letter have been obscured). He adds:

[The beneficiary] has been an inspiration to classical dance in America. I shared his talents and expertise as a choreographer, teacher and director. I admire not only his gifts as an artist but also his efforts at creating and promoting the [petitioning entity] in South Carolina. He has recognized and fostered local talent as well as attracted renowned national and international guest artists.

[REDACTED] states that the beneficiary "has shown himself to be an outstanding member of our community" who lends "international influence" to "the performing arts community" in Columbia. Gov. [REDACTED] adds that he recently attended a performance in which the beneficiary "did a fantastic job." [REDACTED] Mayo [REDACTED] states that the beneficiary "has contributed immeasurably to the development of the Fine Arts in the Midlands area." U.S. Senator Strom Thurmond, who represents South Carolina, states:

[The beneficiary] appears to have contributed significantly in the arts and entertainment industry in South Carolina as founder and Artistic Director of the [petitioning company]. It is my understanding that this Company is highly respected throughout the profession not only for its artistry but for its record of community outreach.

Senator [REDACTED]'s wording implies that he relies upon information from unidentified sources, rather than any first-hand familiarity with the beneficiary's reputation or accomplishments. The above letters seem to indicate that the beneficiary's main achievement lies in establishing a successful classical ballet company in South Carolina. Attestations from South Carolina officials, whatever their own reputations, do not establish that the beneficiary's acclaim extends beyond [REDACTED].

In response to a request by the director for further evidence, the petitioner has submitted five further witness letters. [REDACTED]

[REDACTED] Director of [REDACTED] of the United States and Honorary President of [REDACTED], states:

We are particularly interested in those foreign artists who commit themselves to working in America -- particularly in

parts of the country that are far from the "major media center" and instant national acclaim. National and international acclaim are difficult to assess if there is no ready knowledge of another country. However, one sure sign of [the beneficiary's] national and international reputation is the willingness of major ballet stars to come to Columbia to dance for him. [The beneficiary] has obviously earned professional acclaim from the hardest audience of all, his professional colleagues. He has a very distinguished record in the world of ballet which he achieved in several different countries.

Ms. [REDACTED] does not identify the "major ballet stars" who have danced for the beneficiary's company. The beneficiary cannot be eligible under this visa classification without persuasive evidence that he, himself, is a "major ballet star."

[REDACTED] soloist with [REDACTED] has worked with the beneficiary on several occasions and states that the beneficiary is "an artist of the highest caliber" whose "valuable insight and knowledge have inspired many young dancers to fulfill their goals and aspirations in the dance forum."

[REDACTED] also of [REDACTED] studied under the beneficiary and was formerly a member of the petitioning company. Ms. [REDACTED] indicates that the beneficiary "works very hard to promote ballet in Columbia" and "supporting children in the area. . . . [The beneficiary] is certainly an asset to the community." This letter, from a close associate of the beneficiary, indicates only that the beneficiary's work has a local impact.

[REDACTED] South Carolina, has won several awards, including being named [REDACTED] a Gold Medal [REDACTED] 1980, and the [REDACTED] s 1984 Nijinsky Award for Most Distinguished Male Dancer. Mr. [REDACTED] who has known the beneficiary since 1989, states "[b]efore [the beneficiary] opened his school, he had the highest reputation as a dance teacher on the East Coast. . . . As a choreographer, he is also highly recognized in the professional ballet world." The record does not contain any evidence that this opinion is shared by prominent ballet figures unconnected with the petitioner or the beneficiary. Mr. [REDACTED] asserts that LifeChance, a benefit performance coordinated by the beneficiary, "has become a very important annual event in the state of [REDACTED]" involving "the best dancers of our time."

[REDACTED] Managing Editor of Dance Spirit magazine, New York, New York, states "[o]ur magazine has published small pieces on the work of [the beneficiary] and his company because we found it to be newsworthy and worthwhile information for our readers." Ms. [REDACTED] indicates that she finds the beneficiary's "work to be exciting," but does not assert or demonstrate that the beneficiary is one of

the country's best-known ballet artistic directors, which he must be to qualify for this extremely restrictive visa classification.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

As stated above, the beneficiary founded the petitioning entity. As its artistic director, the beneficiary plays a leading, critical role for the petitioner. The burden is on the petitioner to show that it enjoys a distinguished reputation. It is not sufficient to show that the petitioner is commercially viable or that it engages in classical ballet. The petitioner must establish that it is generally considered one of the nation's premier ballet companies. Such distinction does not automatically arise from being the largest, oldest, or only ballet company in a given locality.

The record contains a letter from [REDACTED]. It is highly tenuous, however, to assert that a dance company assumes national distinction simply because prominent persons have written such letters. Mrs. [REDACTED]'s letter consists of a greeting to those attending a December 1995 performance by the petitioner and other local companies, and general expressions of hope for a better future. The extremely general nature of the wording of this letter does not suggest that Mrs. [REDACTED] had any knowledge of the company before she was asked to write the letter.

The petitioner's own materials indicate that the petitioner's outreach activities are concentrated in school districts in two South Carolina counties. Other evidence, such as newspaper reviews discussed above, indicate that the petitioner's reputation is largely restricted to parts of South Carolina. The beneficiary's leadership of a dance company cannot demonstrate national acclaim if the company itself is not nationally known. While individual witnesses outside of South Carolina are aware of the petitioning entity, this knowledge generally arises from previous relationships between the witnesses and the beneficiary, who owing to his long career as a dancer has contacts in several countries.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner has offered the beneficiary a salary of \$35,000 per year, but the record contains no evidence that the petitioner has to date paid the beneficiary such a salary. Its promotional materials indicate that the beneficiary "works throughout the year without financial compensation." There is no evidence in the record that the beneficiary has ever earned any salary as an artistic director, or that only the very top artistic directors of U.S. ballet companies earn \$35,000 per year.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner submits copies of programs, photographs and reviews to establish that the beneficiary has been involved in the performing arts. Evidence that merely establishes that performances have taken place, however, does not establish the commercial success of those performances. It cannot suffice for the petitioner simply to show that the performances yielded a profit; the purpose of the evidentiary criteria is to elevate the beneficiary above almost all others in the field at a national or international level. Therefore, to satisfy this criterion, the petitioner cannot simply show that the beneficiary is active in the performing arts. To satisfy this criterion, the petitioner must show that the beneficiary is one of the most commercially successful artistic directors of all U.S. ballet companies.

On appeal, the petitioner submits a "Condensed Annual Budgeted Income Statement" which indicates that ticket sales account for \$30,000 of the petitioner's projected 2000 income, a sum not sufficient even to cover the beneficiary's projected salary of \$35,000. The \$30,000 in ticket sales is also almost entirely offset by the projected \$26,000 in marketing expenses. The bulk of the petitioner's income derives from grants and sponsorships, which do not constitute evidence of commercial success.

Beyond the above evidentiary criteria, other evidence indicates that the beneficiary teaches ballet to preschoolers at the Columbia Jewish Community Center, and that the petitioner has donated sums to area hospitals and other charitable causes. While these worthy endeavors are to be admired, they do not demonstrate that the beneficiary is nationally or internationally acclaimed.

The petitioner submits a 1985 letter to the beneficiary from an unidentified individual (the signature is illegible) who states "I am in the process of making a collection of autographs of great personalities . . . in the field of dance. My collection would never be complete without your autograph." This one fan letter proves little, and appears to predate the beneficiary's work as an artistic director.

The petitioner claims that the beneficiary last entered the United States in August 1994, over four years before the September 1998 filing of this petition. Although the record contains no Service documentation of the beneficiary's entries into and departures from the U.S., other evidence indicates previous long-term stays by the beneficiary. A 1998 letter indicates that the beneficiary "provided professional dance training to our daughter . . . for the past ten years," and ~~the beneficiary~~ above-cited letter states that the beneficiary began working at the Atlanta Ballet in 1982. Given the length of time that the beneficiary has been active in the U.S., the beneficiary cannot be said to have enjoyed sustained

acclaim unless he has attained, and sustained, such acclaim in the United States. The record contains no evidence that the beneficiary has worked as an artistic director in any country other than the U.S., and therefore the only appropriate field of comparison consists of the artistic directors of U.S. ballet companies.

A regional reputation in the vicinity of Columbia, however pervasive in the immediate area, does not necessarily translate into the national or international acclaim which the plain wording of the statute clearly demands. Furthermore, evidence that the beneficiary enjoyed a productive career as a dancer does not mandate the finding that he is nationally acclaimed as an artistic director of other dancers.

The director denied the petition, stating that the petitioner had satisfied two of the above criteria because "the beneficiary has made original contributions to the field and . . . his work has been displayed at artistic showcases." The director did not elaborate on the reasons for this finding. It is not at all clear that the regulatory criterion pertaining to "display of the alien's work in the field at artistic exhibitions or showcases" applies to the performing arts such as ballet. It is intrinsic to the nature of the performing arts that an audience witnesses the performance; thus, every public performance by every dancer constitutes a form of "display." Public performance, then, does not distinguish the very top ballet figures from the remainder of the field.

With regard to the beneficiary's "original contributions to the field," the beneficiary's chief contributions as an artistic director appear to be the founding of the petitioning company and organizing the annual LifeChance benefit shows. The record does not show that these contributions are nationally recognized as outstanding. Every competent choreographer and artistic director makes "original" contributions, in that creativity and originality are fundamental to their artistic duties. The documents submitted prior to the director's decision do not show that the beneficiary's influence has extended beyond the state of South Carolina, and those dancers who have worked with the beneficiary.

On appeal, the petitioner submits several additional letters from ballet dancers and artistic directors who have known the beneficiary for years and, in some cases, decades. The evidentiary criteria outlined above are, for the most part, defined by objectively verifiable factors. The petitioner cannot compensate for the beneficiary's failure to meet these objective criteria by submitting positive letters from individuals, selected by the petitioner, who have worked closely with the beneficiary. Other witnesses on appeal are figures in the arts community in South Carolina. The Service does not dispute the beneficiary's reputation within South Carolina, but such acclaim, however intense in the immediate area, does not equal acclaim at a national or international level. The petitioner has produced several



statements by individuals to the effect that the beneficiary is an internationally-acclaimed ballet figure, but the objective evidence of record (which exists independently of the visa petition) does not support this contention.

Many witnesses focus on the annual LifeChance benefit performances as evidence of the beneficiary's influence and acclaim. The record contains no objective evidence, such as media articles or documentation from charitable organizations, to show that LifeChance is a major national event which contributes to the beneficiary's national or international acclaim. Neither does the record contain any explanation for the absence of such evidence, which should exist if LifeChance is indeed one of the most important events in American ballet. While witnesses state that LifeChance attracts international stars, some witnesses also state that most of these performers are, like the beneficiary, from Croatia. Their attraction to LifeChance could be attributed to (1) past work with the beneficiary and (2) affinity to causes aided by LifeChance, many dealing with children in Croatia and surrounding areas of eastern Europe.

While the beneficiary has enjoyed success in his field, the record does not persuasively show that the beneficiary has earned a truly national or international reputation that extends significantly beyond those individuals with long-standing connections to him.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished himself as an artistic director to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the beneficiary shows talent in his field, but is not persuasive that the beneficiary's achievements set him significantly above others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.